

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of)	Case No. 06-O-10113-PEM
)	
G. BRUCE SPENCE,)	DECISION
)	
Member No. 139100,)	
)	
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

In this disciplinary matter, Mark Hartman appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent G. Bruce Spence did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that he be suspended for three years and until he complies with Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.4(c)(ii),¹ and rule 205 of the Rules of Procedure of the State Bar;² that said suspension be stayed; and that he be actually suspended for two years and until he complies with standard 1.4(c)(ii) and rule 205, among other things.

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed on April 21, 2006, and was properly served on respondent on that same date at his official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section³ 6002.1, subdivision (c) (official address). Service was deemed complete as of the time of mailing.

¹Future references to standard or std. are to this source.

²Future references to rule are to this source.

³Future references to section are to the Business and Professions Code.

(*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.)

On May 3, 2006, respondent was properly served at his official address with a notice advising him, among other things, that a status conference would be held on June 26, 2006.

Respondent did not file a responsive pleading to the NDC. On June 19, 2006, a motion for entry of default was filed and properly served on respondent at his official address by certified mail, return receipt requested. The motion advised him that his disbarment would be sought if he was found culpable. Respondent did not respond to the motion.

Respondent did not appear at the June 26 status conference. On June 28, 2006, he was properly served with a status conference order at his official address by first-class mail, postage prepaid.

On July 6, 2006, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his official address on that same date by certified mail, return receipt requested.

The State Bar's efforts to contact respondent were fruitless.

The matter was submitted for decision on July 25, 2006, without hearing after the State Bar filed a brief.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (§6088; rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

It is the prosecution's burden to establish culpability of the charges by clear and convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 12, 1988, and has been a member of the State Bar at all times since.

B. The Robello Matter

1. Facts

On January 21, 2004, Lawrence Robello employed respondent to represent him and his son, Matthew, in a personal injury matter arising from a November 29, 2003, automobile accident. Lawrence paid respondent \$100.

On December 23, 2004, respondent filed a complaint on Matthew's behalf. (*Robello v. Wake*, Mendocino County Superior Court case no. 04-93809.) Respondent took steps to pursue Lawrence's and Matthew's cases, including communicating with opposing counsel and conducting discovery.

Lawrence Robello died on March 8, 2005.

On March 25, 2005,⁴ Susan Robello, as Lawrence's surviving spouse, signed an agreement with respondent agreeing to accept all the benefits and to meet the responsibilities of the fee agreement Lawrence signed with respondent.

Effective September 16, 2005, respondent was suspended from the practice of law for not paying his State Bar membership fees. Also that same date, respondent was placed on "not entitled" to practice status because he did not comply with Minimum Continuing Legal Education (MCLE) Respondent knew or should have known that he was suspended and on "not entitled" status. He did not inform Susan or Matthew that he was not entitled to practice law.

After September 16, 2005, respondent held himself out as being entitled to practice law by:

- (1) Giving Susan legal advice on several occasions;
- (2) Serving a deposition notice on defendant on September 22, 2005;
- (3) Sending opposing counsel two letters on September 22, 2005, discussing substantive matters of the case;
- (4) Sending Susan a letter on October 10, 2005, discussing resolution of the case and

⁴The NDC states that this occurred in 2006, which does not make sense in light of the remaining facts. Accordingly, the court deems this to be a typographical error and finds that this event occurred in 2005.

asking for money for costs;

(5) Appearing at a mandatory settlement conference on November 21, 2005; and

(6) Filing a motion to withdraw as counsel in the Robellos' case on November 21, 2005.

Respondent practice law when he knew he was not entitled to do so.

On February 7 and 24, 2006, a State Bar investigator sent respondent letters requesting that respondent answer in writing specific allegations of misconduct regarding the Robellos' matters. The letters were addressed to respondent's official membership records address and sent by first-class mail. They were not returned to the State Bar as undeliverable. Respondent did not answer the letters.

2. Conclusions of Law

a. Count One - Section 6068, subdivision (a) (Engaging in the Unauthorized Practice of Law)

Section 6068, subdivision (a) requires an attorney to support the Constitution as well as state and federal laws.

Section 6125 requires an individual to be a member of the State Bar in order to practice law in California.

In relevant part, section 6126, subdivision (b) makes a person who has been suspended from membership in the State Bar and practices or attempts to practice, to advertise or to hold him- or herself out as practicing or entitled to practice law guilty of a crime punishable by imprisonment in the state prison or county jail.

By communicating with opposing counsel and his client, making a court appearance and filing a motion in the Robellos' case, respondent held himself out as entitled to practice law and actually practiced law when he was not so entitled. In so doing, he violated sections 6125 and 6126, subdivision (b) and failed to support the laws of this State in wilful violation of section 6068, subdivision (a).

b. Count Two - Section 6106 (Moral Turpitude)

Section 6106 makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his

relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

There is clear and convincing evidence that respondent violated section 6106 by engaging in the practice of law when he knew he was not entitled to do so. Accordingly, he committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

c. Count Three - Section 6068, subdivision (m) (Failure to Communicate)

Section 6068, subdivision (m) requires an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By not telling Susan or Matthew that he was not entitled to practice law, respondent did not keep his clients reasonably informed of significant developments in wilful violation of section 6068, subdivision (m).

d. Count Four⁵ - Section 6068, subdivision (i) (Failure to Participate in Disciplinary Investigation)

Section 6068, subdivision (i) requires an attorney to participate and cooperate in any disciplinary investigation or other disciplinary or regulatory proceeding pending against him- or herself.

By not responding to the State Bar's February 7 and 24, 2006, letters, respondent did not participate in the investigation of the allegations of misconduct regarding the Robellos' case in wilful violation of 6068, subdivision (i).

IV. LEVEL OF DISCIPLINE

A. Aggravating Circumstances

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Std. 1.2(b).)

Respondent has one prior instance of discipline. (Std. 1.2(b)(i).) In Supreme Court case no. S103284 (State Bar Court case no. 99-O-11103), filed March 6, 2002, and effective April 5, 2002, discipline was imposed consisting of one year's stayed suspension and two years'

⁵The NDC contained two "count threes." This is now count four.

probation with conditions including 90 days' actual suspension, among other things. Respondent stipulated to culpability of violating section 6068, subdivisions (b), (c) and (d). Multiple acts of misconduct was the aggravating circumstance. The mitigating factor was no prior instances of discipline.

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to participate therein, a serious aggravating factor. (Std. 1.2(b)(vi); *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 104, 109.)

B. Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors.

C. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).) Discipline is progressive. (Standard 1.7(b).)

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-

defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standards 2.3 and 2.6 apply in this matter. Standard 2.3 recommends actual suspension or disbarment for culpability of an act of moral turpitude, fraud, intentional dishonesty or of concealment of a material fact from a court, client or other person, depending on the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the attorney's acts within the practice of law. Standard 2.6 recommends suspension or disbarment depending on the gravity of the offense or harm, if any to the victim, with due regard to the purposes of imposing discipline.

Respondent has been found culpable of engaging in the unauthorized practice of law and in acts of moral turpitude as well as not communicating with clients or participating in the disciplinary investigation of this matter.

The State Bar recommends, among other things, three years' stayed suspension and actual suspension for two years and until he complies with standard 1.4(c)(ii) and with rule 205. Having considered the facts and the applicable law, the court agrees.

The court found *Farnham v. State Bar* (1976) 17 Cal.3d 605 and *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563 to be instructive as to the level of discipline to be recommended in this case.

In *Farnham*, discipline of two years' stayed suspension and six months' actual suspension was imposed because the attorney abandoned two clients, misrepresented the status of the case to one of them and engaged in the unauthorized practice of law as to the other. During the time that Respondent Farnham was suspended from the practice of law, he met with a client, told him that he would accept his case and, on two occasions, told him that he would have a complaint ready to file by certain dates, both within the time of his suspension. In aggravation, the court considered respondent's lack of insight into his misconduct and two prior instances of

discipline.⁶ No mitigating factors were noted. The misconduct in the instant case was more extensive than that in *Farnham* and merits greater discipline.

In *Taylor*, the attorney had committed serious misconduct in three client matters, including repeatedly practicing law while suspended, deceiving a court and client by filing an unauthorized lawsuit and not complying with his criminal probation by disobeying two separate court orders requiring him to provide support to his minor children. He also had a prior record of discipline and did not participate in either the present or past disciplinary proceedings. There were no mitigating circumstances. The Review Department recommended and the Supreme Court agreed that he should be disbarred. Respondent's misconduct in the instant case is less extensive than that in *Taylor* and warrants less discipline.

Respondent's misconduct and lack of participation in this matter raises concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. No explanation has been offered that might persuade the court otherwise and the court can glean none. Having considered the evidence and the law, the court believes that actual suspension for two years and until he complies with standard 1.4(c)(ii) and with rule 205, among other things, is adequate to protect the public and proportionate to the misconduct found and the court so recommends.

V. DISCIPLINE RECOMMENDATION

IT IS HEREBY RECOMMENDED that respondent G. Bruce Spence be suspended from the practice of law for three years and until he provides proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct; and until the State Bar Court grants a motion to terminate his actual suspension at its conclusion or upon such later date ordered by the court. (Rule 205(a), (c), Rules Proc. of State Bar); that said suspension be stayed; and that he be actually suspended from the practice of law for two

⁶The court notes that one such prior discipline was for nonpayment of dues. The other was for abandonment of four clients which resulted in a three-month actual suspension.

years and until he complies with standard 1.4(c)(ii) and with rule 205, as set forth above.

It is also recommended that he be ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.

It is also recommended that respondent be ordered to comply with the requirements of rule 955 of the California Rules of Court (rule 955) within 30 calendar days of the effective date of the Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.⁷

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners during the period of his actual suspension and furnish satisfactory proof of such to the State Bar Office of Probation within said period.

VI. COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: September 22, 2006

PAT McELROY
Judge of the State Bar Court

⁷Failure to comply with rule 955 could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)